

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KURT JONATHON JOHNSON,

Defendant-Appellant.

UNPUBLISHED

July 14, 2005

No. 254818

Kent Circuit Court

LC No. 03-001846-FC

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

MEMORANDUM.

A jury found defendant guilty of one count of first-degree home invasion, MCL 750.110a(2), two counts of kidnapping, MCL 750.349, two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(e), first-degree felony murder, MCL 750.316(b), second-degree murder, MCL 750.317 (vacated), and four counts of possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion when it sustained the prosecutor's objection to the admission of group therapy notes regarding defendant's mental health treatment that he underwent prior to committing the offenses.

A trial court's ruling on whether to admit or exclude evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). However, decisions concerning the admission of evidence frequently involve preliminary questions of law, e.g., whether a rule of evidence precludes admissibility of the evidence, and this Court reviews issues of law de novo. *Id.*

While we find that there was no error in the trial court's ruling, it is unnecessary to substantively address MRE 803(3), (4), and (6) as argued by defendant, where, assuming error, it was clearly harmless, did not constitute a miscarriage of justice, and was not outcome determinative. MCL 769.26; *Lukity*, *supra* at 495-496.¹ Karen Elbert, a social worker who met with defendant before the crimes, testified to the jury with respect to the contents of the therapy

¹ Moreover, defendant fails to address the trial court's additional ruling that the evidence was not admissible pursuant to MRE 403. Accordingly, there is no basis for reversal.

notes at issue. The prosecutor did not object to Elbert's testimony as she informed the jury about the observations of various therapists that were contained in the notes. After she testified about the notes, defendant moved to have the notes themselves admitted into evidence, at which point the prosecutor objected to admission. Although the trial court subsequently denied admission of the notes outside the presence of the jury, the jury was not instructed to disregard Elbert's testimony, and thus the information was squarely before the jury for its consideration. Additionally, the jury considered and rejected ample evidence about defendant's alleged insanity. Furthermore, the prosecutor presented a substantial amount of incriminating evidence establishing guilt. As there was no error and, assuming error, it was harmless, there is simply no basis for reversal.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Pat M. Donofrio